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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 101206604-1758-02]

RIN 0648-XF017

Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; 2016-2017 Commercial Accountability Measures and Closure for King Mackerel in the Florida West Coast Northern Subzone

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for commercially harvested king mackerel in the Florida west coast northern subzone of the eastern zone of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) through this temporary rule. NMFS has determined that the commercial quota for king mackerel in the eastern zone, Florida west coast northern subzone of the Gulf EEZ will be reached by November 10, 2016. Therefore, NMFS closes the Florida west coast northern subzone to commercial

fishing for king mackerel on November 10, 2016, to protect the Gulf king mackerel resource.

DATES: The closure is effective at noon, local time, November 10, 2016, until 12:01 a.m., local time, on October 1, 2017.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, NMFS Southeast Regional Office, telephone: 727-824-5305, e-mail: *susan.gerhart@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish includes king mackerel, Spanish mackerel, and cobia, and is managed under the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The Gulf migratory group of king mackerel is divided into western and eastern zones. The Gulf's eastern zone for king mackerel is further divided into the Florida west coast northern and southern subzones that have separate commercial quotas. The Florida west coast northern subzone is that part of the Gulf EEZ between 26°19.8' N. lat., a line extending directly west

from the boundary between Lee and Collier Counties, Florida, and 87°31.1' W. long., a line extending directly south from the state boundary of Alabama and Florida. The commercial quota for the Florida west coast northern subzone is 178,848 lb (81,124 kg), round or gutted weight, as specified in 50 CFR 622.384(b)(1)(i)(B)(2).

Regulations at 50 CFR 622.8(b) and 50 CFR 622.388(a)(1)(i) require NMFS to close the commercial sector for Gulf migratory group king mackerel in the Florida west coast northern subzone when the commercial quota is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. Based on the best scientific information available, NMFS has determined the commercial quota of 178,848 lb (81,124 kg) for Gulf migratory group king mackerel in the Florida west coast northern subzone will be reached by November 10, 2016. Accordingly, the Florida west coast northern subzone is closed to commercial fishing for Gulf migratory group king mackerel effective from noon, local time, November 10, 2016, through September 30, 2017, the end of the current fishing year. The next fishing year for the Florida west coast northern subzone is October 1, 2017, through September 30, 2018.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for or retain Gulf group king mackerel in the EEZ in the closed subzone, as specified in 50 CFR 622.384(e) (1) and (2). A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed subzone under the bag and possession limits set forth in 50 CFR 622.382(a) (1) (ii) and (a) (2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel harvested from the closed subzone, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to king mackerel from the closed zones or subzones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor, as specified in 50 CFR 622.384(e) (3).

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of Gulf migratory group king mackerel and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.388(a)(1)(i) and 50 CFR 622.384(e) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement this action to close the Florida west coast northern subzone of the Gulf eastern zone to commercial king mackerel fishing constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary, because the rule implementing the

commercial quota and the associated AMs has already been subject to notice and public comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because the capacity of the fishing fleet allows for rapid harvest of the commercial quota, and there is a need to immediately implement this action to protect the king mackerel resource. Prior notice and opportunity for public comment would require time and could potentially result in a harvest well in excess of the established commercial quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 7, 2016.

Jenni Wallace,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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